

the Clayton Act (other than *Section 22* thereof), be made applicable to contempt proceedings arising under the Federal Food, Drug and Cosmetic Act, as asserted by contemnors. To sustain such contention would work the anomalous situation which contemnors state, namely, that Congress 'put such proceedings within the Clayton Act and by the same words took them out from the Clayton Act.' *Section 24* of the Clayton Act (*Title 28 U. S. C. A. 389*) would produce such a paradoxical result. Under contemnors' position, all the sections of the Clayton Act relating to contempt proceedings must be presumed to have been intended by Congress to apply to criminal contempt proceedings instituted under the Federal Food, Drug and Cosmetic Act, and not only *Sections 22 and 25* thereof (*Title 28, U. S. C. A. 390*). To make such assumption is to charge Congress with being a paradoxer. Congress cannot be so charged with such self-annulling action as asserted by contemnors.

"*Section 24* of the Clayton Act, *supra*, is not specifically made to apply to contempt proceedings instituted under the Federal Food, Drug and Cosmetic Act as is *Section 22* of said Act. *Section 24* of the Clayton Act establishes a limitation of action. A statute creating a limitation against the bringing of an action is never assumed to be effective as against actions instituted by the Federal Government and is only effective against such actions when specifically made so. Exemption from statutes of limitation ordinarily is implied in favor of the State and Federal Governments (*34 Am. Jur. 303, etc.*).

"From what has been heretofore said, it is not necessary to discuss other points raised by contemnors in their briefs.

ORDER

"Contemnors' motion to dismiss this action is by the Court overruled."

On October 26, 1948, after further consideration of the entire matter, the court found the corporation and the individuals not guilty of contempt.

2574. Adulteration and misbranding of prophylactics. U. S. v. 246 Gross * * *.
(F. D. C. No. 25394. Sample No. 19531-K.)

LIBEL FILED: August 17, 1948, Middle District of Tennessee.

ALLEGED SHIPMENT: On or about July 12, 1948, by World Merchandise Exchange & Trading Co., Inc., from New York, N. Y.

PRODUCT: 246 gross of *prophylactics* at Nashville, Tenn. Examination of samples showed that 6.3 percent were defective in that they contained holes.

LABEL, IN PART: "Silver-Tex Prophylactics Manufactured by The Killian Mfg. Company, Akron, Ohio."

NATURE OF CHARGE: Adulteration, *Section 501 (c)*, the quality of the article fell below that which it purported and was represented to possess.

Misbranding, *Section 502 (a)*, the label statement "Prophylactics" was false and misleading as applied to an article containing holes.

DISPOSITION: December 16, 1948. Default decree of destruction.

2575. Adulteration and misbranding of prophylactics. U. S. v. 94 Gross * * *.
(F. D. C. No. 25501. Sample No. 485-K.)

LIBEL FILED: August 25, 1948, Western District of North Carolina.

ALLEGED SHIPMENT: On or about July 9, 1948, by World Merchandise Exchange & Trading Co., Inc., from New York, N. Y.